THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.4160 of 2006

Date : 10-11-2006

Between:

Varada Venkata Rama Subrahmanyeswara Rao
S/o.Venkata Ramalingeswara Rao … Petitioner

And

Poola Kanaka Durga w/o.Bhadra Reddy … Respondents
and another

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.4160 of 2006

ORDER:

1. This Court issued *rule nisi* on 3-3-2006 and granted interim order in W.P.M.P.No.5207/2006 to the effect that the 1st respondent is directed not to demolish the house of the petitioner without following the due process of law.

2. The Writ Petition is filed for a writ of mandamus or any other appropriate writ, order or direction declaring the proposed action of the 1st respondent at the instigation of 2nd respondent in demolishing the house of the petitioner bearing D.No.1-4, situated at Challapalli Gram Panchayat and Mandal, Krishna District, as wholly illegal, arbitrary and violative of principles of natural justice and violative of Article 300-A of the Constitution of India and for a consequential order further directing the respondents to drop all further proceedings including demolition of the house of the petitioner and to pass such other suitable orders.

3. It is stated by the writ petitioner in the affidavit filed in support of the Writ Petition that she is the absolute owner and possessor of the house bearing D.No.1-4 at Challapalli village and mandal, Krishna District which is under the limits of 1st respondent-Gram Panchayat. It is further stated that the petitioner has been in continuous possession and enjoyment of the said house since three decades in her own right, title and interest and had been paying the necessary taxes to the authorities concerned. It is also further stated that the said site was assigned and a patta was granted in her favour on 11-5-1974 by the Tahsildar, Divi, Krishna District, admeasuring 126 sq.yards in plot No.2 in layout No.248 bounded by East : Uppalapati Subba Rao; South : High-way road, North : Varada Venkata Ramalingeswara Rao choultry and West : way. It is

also further stated that immediately, the petitioner constructed a house in the said site after obtaining necessary permission from the 1st respondent-Gram Panchayat and door No.1-4 was also given and the said house is not causing any hindrance to the vehicular traffic nor to the neighbours. There was no objection from any quarter with regard to the possession of the petitioner. It is further stated that while the matters stood thus, on 28-2-2006 the subordinates of the 1st respondent-Gram Panchayat came to the petitioner's premises and started taking measurements. Immediately the petitioner questioned them as to why they were taking measurements of her house without any intimation to her and on the persistent objections they replied that they are going to demolish the structure of the petitioner's house at the instigation of the 2nd respondent. Except saying that they did not give any positive reply or reasons for demolition of the house. It is further stated that the petitioner constructed the house as per the plan approved by the respondents. The petitioner protested the illegal action saying that the respondents cannot interfere with her lawful and peaceful possession and enjoyment of her house and even if the respondents want to acquire the land as per the Land Acquisition Act and also as per the provisions of A.P. Panchayat Raj Act 1994. The petitioner also stated that she is entitled to prior notice and without following the due process of law the demolition cannot be carried out.

4. The 1st respondent filed counter affidavit stating that it is a fact that the petitioner was granted house site patta in S.No.248 in Block No.11, Plot No.2 to an extent of 126 sq.yards with a condition that the petitioner shall leave 6 ft. space from the high way road margin, but contrary to the conditions of the patta certificate the petitioner by encroaching the road margin constructed a thatched house which is in

addition to her original allotted land and therefore a notice was given on 11-10-2002 to vacate the encroached portion but the same was not vacated by the writ petitioner so far. It is further stated that while so it seems the 2nd respondent filed a complaint against the writ petitioner before the Legal Services Authority (Lok Adalat) i.e., Senior Civil Judge, Avanigadda complaining that the writ petitioner had encroached the road margin causing inconvenience to the traffic in front of their choultry. Accordingly on 1-10-2005 a notice was received from the office of the Lok Adalat to attend on 29-10-2005 for the enquiry sought to be conducted on the petition filed by the 2nd respondent. However a detailed report was submitted to the Lok Adalat about the encroachment made by the writ petitioner and the matter is under adjudication. In the said report, the 1st respondent had categorically stated that the encroachment made by the writ petitioner can only be evicted with the help of police as the writ petitioner is highly influential. Apart from this, the 1st respondent also categorically stated that the land under encroachment is Government poramboke i.e., high way road margin and therefore the Mandal Revenue Officer is the competent authority to take steps against the petitioner for eviction. Further specific stand is taken that the 1st respondent never went to the site of the petitioner nor had taken measurements. It is also stated that as the matter is seized by the Lok Adalat, the 1st respondent had not initiated any steps for eviction except issuing some notice way back in the year 2002. Further specific stand is taken that the encroachments will be cleared only by following the due process of law and not high-handedly as alleged by the petitioner. It is also further stated that immediately after the final disposal of the dispute pending before the Lok Adalat, action will be initiated in accordance with law for eviction of the encroachments made by the petitioner.

5. The 2nd respondent in the Writ Petition filed W.V.M.P.No.1572/2006 wherein several factual details had been narrated. In substance the stand taken by the 2nd respondent is that inasmuch as the writ petitioner is in occupation of road margin belonging to R & B Department and the competent authority had declared the R & B Road into a National Highway and in result the road was handed over to the National Highways Department the same is vested with them. Further specific stand is taken that the construction made by the petitioner is obstructing the drainage construction programme since it is a road margin. It is also stated that a kalyanamandapam was constructed in the name of Sri Varada Venkata Ramalingeswara Rao and Soubhagyamma and since the objected site is on the road margin admittedly it is creating any amount of obstruction to their ingress and egress. Certain representations said to have been made in this regard also had been referred to and several factual details had been referred to in this regard.

6. In the light of the facts and circumstances and also the specific stand taken by the 1st respondent it is clear that the 1st respondent had not initiated any action at all except issuing some notice way back in the year 2002. In view of the same, no specific direction as such need be issued in the light of the specific stand taken by the 1st respondent as the 1st respondent is not interested in initiating any action whatsoever inasmuch as the Mandal Revenue Officer is the competent authority in this regard. Be that as it may, the specific stand taken by the 1st respondent that even otherwise the 1st respondent is bound to follow the due process of law, is hereby recorded. However, in the light of the stand

taken by the 1st respondent that the Mandal Revenue Officer is the competent authority and also further in the light of the stand taken by the 2nd respondent that the said property vests in the National Highways Authority, it is needless to say that the concerned authorities may follow the due procedure in the event the concerned authorities are of the opinion that the objections raised by the 2nd respondent are tenable and in the light of those objections it would be just and proper to initiate such appropriate action which may be taken in accordance with law. Except making this observation, nothing else can be done in the present Writ Petition.

7. With the above observations, the Writ Petition is disposed of. No costs.

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Justice P.S. Narayana

Date : 10-11-2006

Note: Furnish copy in four days.

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